

CONCESSION AGREEMENT

THIS AGREEMENT, made this 17th day of May, 1974 ⁵
between HEBER CREEPER, INC., a Utah Corporation, hereinafter
referred to as "CREEPER", and HUBCO, of Heber, a Utah corpora-
tion, hereinafter referred to as "HUBCO." (All covenants of
this agreement by HUBCO will be personally guaranteed by Delbert
Wallengren, of Salt Lake City, Utah.) ✓

RECITALS

1. CREEPER is the operator of a scenic steam railway
between Heber City and Bridal Veil Falls, in Utah County,
pursuant to a concession from the Department of Parks and
Recreation, State of Utah. ✓

2. HUBCO desires to obtain from CREEPER the right to
operate a dining car as part of at least one daily excursion
run on the railway and to operate a nightclub and dining car
as part of scheduled and special evening excursion runs. ✓

3. CREEPER is willing to grant HUBCO such rights
consistent with the terms of its concession from the Department
of Parks and Recreation and upon the further terms and conditions
stated herein. ✓

AGREEMENT

4. Concession and Term. CREEPER hereby grants to
HUBCO a concession for the operation of a dining car as a part
of its daily excursion run or runs and a nightclub (lounge) and
dining car as a part of scheduled and certain special evening
excursion runs, together with the use of the name "Heber Creeper"
and the goodwill of CREEPER for a term to commence on the 1st
day of May, 1974 and to end the 30th day of April, 1975, a
period of one year inclusive, together with any or all rights
of first refusal as hereinafter contained.

Winter
Season
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If HUBCO is not granted a right to renew this agreement for a successive period, at the end of the first term, then CREEPER will purchase HUBCO's leasehold improvements under the terms outlined in Section 10 of this agreement. Because of the long-range implications of operating the lounge and diner cars in a highly successful manner, all renewals of the lease will be subject to a judgment decision of the majority of the Board of Directors of CREEPER as to reasonably satisfactory performance on the part of HUBCO as a condition of continuing the agreement. ✓

5. Payments. It is agreed that the following payments will be collected and transferred between the parties as follows:

(a) The CREEPER shall collect from each and every customer who purchases a ticket for meals on the various runs, the amount of \$4.00 for each meal on the excursion run and \$8.50 for each meal on the night train, provided however that if general fare increases are approved by the Public Service Commission then it is agreed that the amount of \$4.00 and \$8.50 accordingly shall be increased for each customer still purchasing meals on the runs.

(b) HUBCO shall collect a corresponding amount of \$4.00 per customer on excursion runs and \$8.50 per customer on the night train runs for any and all persons who may elect to purchase a meal during the run without advance reservation and within HUBCO'S capability with regard to serving said meals.

(c) At the conclusion of each round-trip run, HUBCO shall deliver to CREEPER the exact amount collected from each customer during the trip for food purchases and HUBCO and CREEPER shall render an accounting to each other on a per run basis for all persons who purchased meals on the dining car accordingly.

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eliminated
J. Dell

(d) Not less than a weekly basis the CREEPER shall pay to HUBCO the total amount collected for meals purchased on the dining car for the prior week as represented by the accounting agreed upon between the parties.

incentive
(e) On or before the 10th day of each and every month, HUBCO shall pay to the CREEPER an amount equal to 7% of the gross receipts after sales tax received from the sale of all other goods and services (excluding the sale of liquor) in connection with the operation of the dining and lounge cars on the daily and evening excursion runs.

(f) In addition to the foregoing amounts HUBCO shall pay to CREEPER the cost of services performed by CREEPER for the benefit of HUBCO's concession operation, including but not limited to a proportionate cost of cleaning refuse outside the cars, labor for fueling generator equipment; fuel for generating equipment, and a proportionate cost of providing of water and emptying chemical toilets. Costs for any and all such services shall be agreed upon in advance of the performance of such services and be based on time and material costs to the CREEPER. All payments for services required in this subparagraph (f) shall be due and payable within 15 days after the end of each calendar month in which operations are conducted by HUBCO pursuant to this agreement.

(g) HUBCO agrees to maintain adequate records of receipts separate from other operations HUBCO may engage in and to permit the reasonable inspection of such books and records by CREEPER upon their request during regular business hours.

6. Operation of Concession. HUBCO agrees to use and

minimum
\$1000/mo
avg 7%

and occupy the dining and nightclub (lounge) cars in connection with the preparation and service of food and the providing of entertainment for customers, and for no other purpose. HUBCO agrees not to compete with CREEPER in the sale of various railway novelty items which are now being sold or may be sold by CREEPER. In addition, HUBCO agrees to submit to CREEPER complete plans for interior decoration of the dining and nightclub (lounge) cars and agrees that such plans shall be in harmony with the basic theme that CREEPER desires to implement and maintain. HUBCO will furnish CREEPER with a detailed time schedule for planned restoration and decoration and warrants to CREEPER to complete such schedule prior to June 1, 1974, subject to delivery of materials and equipment by vendors. HUBCO also agrees to provide CREEPER with detailed lists of equipment, materials and labor/installation costs supported by invoices to enable an accurate determination of HUBCO's investment in leasehold improvements.

7. Minimum Operations. HUBCO agrees to provide the food and services for one dining car for at least one daily excursion run scheduled by CREEPER. In addition, HUBCO agrees to provide food and service for one dining and one nightclub (lounge) car for scheduled evening excursion runs during the regular operating season of CREEPER. The nightclub train will consist of not less than one diner, one converted hospital car to be used as a lounge car, one chair car, one open air chair car, or other combination of cars suitable for seating dining/lounge patrons to be determined by CREEPER. All food, materials and services to be furnished by HUBCO shall be ready at least thirty (30) minutes in advance of the published departure times of excursion runs. In the event HUBCO desires to add additional cars to any excursion run, HUBCO shall notify CREEPER at least six (6) hours prior to departure.

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Part of
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Double
Capacity

*8. Special Runs. HUBCO will provide the above services on all designated special runs wherein CREEPER has given twenty-four (24) hours advance notice to HUBCO to furnish the same.

9. HUBCO's Obligations and Agreements.

(a) HUBCO assumes all responsibility for operation of the concession and will at its own expense conform with all laws and regulations of all Federal, State and Municipal Governments and appropriate departments, commissions, boards and offices thereof, and particularly with the orders and regulations of the Board of Health and the Public Service Commission of the State of Utah.

(b) HUBCO acknowledges that it is engaged as an independent contractor in the operation of the concession and that he will exercise full control and supervision over all said concession operations.

(c) HUBCO will pay all bills for labor and material required in the interior decoration of the lounge car and to personally supervise the restoration, cleaning and decoration of the diner car and the lounge car.

(d) HUBCO shall exonerate, indemnify and hold harmless CREEPER from and against, and shall assume all responsibility for payment of all Federal, State and Local taxes or contributions imposed or required under employment insurance, social security and income tax laws, with respect to HUBCO's employees engaged in the operation of the concession.

(e) HUBCO, at its own expense, will insure and keep insured leasehold improvements and the equipment and fixtures against fire and other hazards and products liability coverage in such reasonable amounts as may be required by CREEPER, the Public Service Commission, the Division of Parks and

*Structural
Changes*

Printer

out

Recreation, State of Utah, and the insurance company of CREEPER. Said policy will insure the CREEPER and HUBCO as their interest appear.

Reviewed & how much??

(f) HUBCO warrants to clean and maintain the interior of the diner and lounge cars throughout the operating season at its own expense. ✓

(g) HUBCO agrees to provide \$600.00 or 2% of gross sales from concessions, excluding liquor sales, less tax, whichever is greater for advertising during the first season of operation. } *Reviewed*

10. CREEPER's Obligations and Agreements.

(a) CREEPER agrees to maintain and paint the exterior and to keep in good repair all machinery, equipment and fixtures necessary to the operations of the scenic steam railway including but not limited to cleaning the exterior of the cars and the exhaust filters. ✓

(b) CREEPER agrees to provide a reservation service for HUBCO at the ticket office and depot maintained by CREEPER. ✓

(c) CREEPER agrees to use its best efforts to obtain approval of this concession agreement by all necessary authorities, including the Public Service Commission, State of Utah and the Department of Parks and Recreation, State of Utah. } *delete*

(d) CREEPER intends and agrees to equip the dining car and lounge car with independent power sources to drive the generators on both the cars to supply them with electrical power and to maintain such equipment during the term of this agreement.

(e) CREEPER agrees to secure additional chairs for the diner to bring the total to forty-eight (48) and to perform necessary minor repair, cleaning, etc. to enable use of diner. } *delete*

(f) CREEPER agrees to indemnify and hold harmless HUBCO against loss of investment in leasehold improvements in the event the ownership of the hospital/lounge car becomes the subject of litigation.

(g) CREEPER agrees to indemnify and hold harmless HUBCO against loss of investment in leasehold improvements in the event the concept is not operational because of failure to obtain permission from Department of Parks and Recreation, State of Utah.

(h) CREEPER agrees to indemnify and hold harmless HUBCO against loss of investment in leasehold improvements in the event parties are unable to secure liquor agency, set up licenses, and beer license arrangements.

(i) CREEPER agrees to indemnify and hold harmless HUBCO against loss of investment in leasehold improvements in the event CREEPER fails to provide operational, electrical, plumbing, and air conditioning systems.

(j) CREEPER shall provide steam to the diner and lounge cars on at least one direction of each trip, subject to the requirements imposed by the Board of Health (when the diner/lounge are coupled directly to the engine).

(k) CREEPER agrees to keep insured all of its railroad equipment and employees and customers by adequate public liability insurance coverage and to hold HUBCO harmless from liability for any injuries suffered by a customer while riding on said railroad except as to injuries which may be caused due to the negligence or intentional misconduct of one of HUBCO's employees.

(l) CREEPER agrees to devote at least as many dollars to advertising the diner/lounge concept as HUBCO

180° Needs Steam

Delete

Reflect time

and agreed to allow HUBCO to review and edit advertising materials related directly to the diner/lounge concept.

clarify

11. Advertising and Preservation of Goodwill. HUBCO will protect and preserve the name and goodwill of "Heber Creeper" and/or "Wasatch Mountain Railway and Development Company" and shall submit in advance of its use any advertising material used by HUBCO in connection with its concession for the consent of CREEPER.

*12. Assignment. HUBCO may not assign, mortgage or encumber this concession without the written consent of CREEPER.

13. Limitations. It is understood and agreed by the parties hereto that this concession agreement although binding between the parties upon execution shall be subject to approval by the Division of Parks and Recreation, State of Utah and the Public Service Commission, State of Utah, which approval HUBCO and CREEPER agree to use their best efforts to obtain as well as any and all licenses as required.

14. Renewals. It is agreed between the parties that within thirty (30) days of the date of the annual termination of this agreement, the parties shall in writing determine whether or not the agreement shall be renewed for a successive term and accordingly notify the other party in writing at least thirty (30) days prior to the expiration of said lease agreement; provided however that although CREEPER shall have the option to determine whether or not the lease shall be renewed for a successive term, based upon prior satisfactory performance by HUBCO, as provided heretofore, HUBCO shall, based upon its reasonable performance of this agreement, have the first right of refusal for any successive leases of the concession facility. In the event of renewals after the first year, successive renewals shall be on the same terms and for the same period of time except as to payments as shown in paragraph 2, which payment shall be determined annually by mutual agreement of both parties.

15. Maintenance and Repairs. It is agreed as between the parties that HUBCO shall be responsible for all repairs to its own leasehold equipment, decorations and inventory as well as any minor repairs to the equipment used by HUBCO in connection with its concession operation. For the purposes of determining minor repairs, any repairs to CREEPER's equipment used by HUBCO of less than \$150.00 shall be deemed "minor" repairs and anything in excess of \$150.00 shall be deemed "major" repairs. It is further agreed that CREEPER shall be responsible for all repairs to the cars and running gear connected therewith including major repairs to equipment furnished by CREEPER and used directly by HUBCO in the concession operation. ✓

16. Termination of Agreement. If termination of this agreement together with the rights of first refusal at the end of the first term is initiated by CREEPER, CREEPER agrees to purchase HUBCO's investment in leasehold improvements and existing inventory that cannot be used in the Hub Cafe at cost, provided HUBCO makes every effort to purchase items that could be used in HUBCO's existing cafe. If termination is initiated by HUBCO at the end of the first term or termination by either party at the end of any term other than the first, CREEPER agrees to purchase HUBCO's investment in leasehold improvements and inventory at cost less depreciation on a five (5) year schedule. In the event that either party shall fail to perform the covenants and obligations contained in the agreement or shall default in their obligations hereunder, the defaulting party shall pay all costs of enforcement and attorney's fees required to enforce the agreement. ✓

17. Personal Guarantee. The undersigned, Delbert Wallengren, agrees to personally guarantee the performance of all the covenants and conditions to be performed by HUBCO and be jointly responsible for any damages or claims occasioned by any default or defaults of HUBCO.

18. Entire Agreement. This agreement contains the entire understanding between the parties. Any modification or change of the terms of this agreement must be made in writing and signed by the parties hereto.

IN WITNESS WHEREOF the parties have executed this agreement on the day and year first above written.

HEBER CREEPER, INC.

By *Lowe Ashton*
LOWE ASHTON, President

HUBCO OF HEBER, INC.

By *Delbert Wallengren*
DELBERT WALLENGREN, PRESIDENT

Delbert Wallengren
DELBERT WALLENGREN, an Individual

Ray L Arnold
Witness

Better Booking show up -